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**United States and Brazil agree to use newly created
Consultative Mechanism to promote cooperation on
HIV/AIDS and address WTO patent dispute**

WASHINGTON - U.S. Trade Representative Robert B. Zoellick announced today that the United States and Brazil have agreed to transfer their disagreement over a provision of Brazil's patent law from formal WTO litigation to a newly created bilateral consultative mechanism. The agreement is a step forward both for the common fight against HIV/AIDS and the constructive handling of this patent dispute. It will permit more effective and less confrontational consideration of intellectual property issues and ensure that such discussions do not divert attention away from the shared goal of combating the spread of HIV/AIDS.

"The Bush Administration wants to resolve trade disputes by seeking constructive solutions to problems that arise. This dispute has been about an element of Brazil's patent provisions that could be used as an import barrier," Ambassador Zoellick said. "The United States has been supportive of Brazil's bold and effective program to combat the HIV/AIDS crisis. With this positive step, we will be able to harness our common energy toward our shared goal of combating the spread of this dangerous virus."

The United States and Brazil have set up the U.S.-Brazil Consultative Mechanism to improve their capacity to find creative solutions for trade and investment issues of mutual concern. This forum should prove useful as the United States and Brazil continue to work to accommodate their mutual desire to protect intellectual property rights without compromising their efforts to combat HIV/AIDS.

"I stand four-square behind strong enforcement of the WTO rules on intellectual property," said Ambassador Zoellick. "However, litigating this dispute before a WTO dispute panel has not been the most constructive way to address our differences, especially since Brazil has never actually used the provision at issue. Today's understanding is another step in the administration's flexible approach to health and intellectual property issues that we affirmed earlier this year."

In February, the Bush Administration stated the commitment of the United States to a flexible approach that is sensitive to health crises and also protective of intellectual property rights. Under this policy, the Administration has informed WTO Members that as they take steps to address major health crises, such as the HIV/AIDS crisis in sub-Saharan Africa and elsewhere, the United States would raise no objection if Members availed themselves of the flexibility afforded by the WTO TRIPS Agreement. This agreement allows Brazil to receive important pharmaceutical support for its HIV/AIDS program.

The U.S. dispute with Brazil has been over a narrow provision in Brazil's patent law designed to pressure patent owners to manufacture their invention in Brazil. Under the terms of today's agreement, Brazil will provide advance notice to the U.S. Government before utilizing this provision. Therefore, if Brazil seeks to activate this provision there will be an adequate opportunity for consultations in the bilateral Consultative Mechanism. This will provide an early warning system to protect U.S. interests. The United States reserves all its rights in the WTO with respect to this matter.

The WTO Agreement on Trade-related Aspects of Intellectual Property Rights (the TRIPS Agreement) has not yet been fully implemented by all WTO members. Achieving compliance with this agreement remains a major Administration priority.

The Bush Administration cares deeply about the HIV/AIDS crisis and what it means to the individuals, families and communities affected by this disease in developed and developing countries. The Government of Brazil has highlighted the importance of addressing the HIV/AIDS issue in a comprehensive manner, via prevention programs, integrating its drug distribution program to the broader health care system, and recognizing the need for ongoing research and development.

Background

On April 30, 2000, the United States requested that the WTO establish a dispute resolution panel to review a narrow part of Brazil's patent law referred to as a local manufacturing requirement. Article 68(1)(I) of the law provides that if a patented product is not being manufactured in Brazil within three years of the issuance of the patent, the government may compel the patent owner to license a competitor. However, Article 27.1 of the TRIPS Agreement provides that patents may be used without discrimination as to "... whether the products are imported or locally produced." The United States continues to question the consistency of this provision under the obligations of the TRIPS Agreement, which prohibits such conditions.

A separate article in Brazil's patent law – Article 71 – provides for compulsory licensing of drugs to combat a public health crisis. Other provisions of Article 68 permit compulsory licensing to address (1) abuse of patent rights, (2) abuses of economic power and (3) failure by the patent holder to supply the needs of the domestic market. The United States was not challenging these provisions in this case.

The United States continues to view local manufacturing requirements as being inimical to the principles of free trade and inconsistent with various WTO rules, including the TRIPS Agreement. The U.S. Government will aggressively engage other countries that impose or maintain such requirements and, if

appropriate, pursue WTO dispute settlement.

Resolution of this matter should facilitate efforts of the United States and Brazil to work together toward addressing intellectual property rights in various fora, including in the FTAA, and to address related patent issues bilaterally.

The commitment of the United States to TRIPS enforcement remains strong. The effective protection of all American intellectual property, including that of pharmaceuticals, is an essential U.S. trade interest. Moreover, protection of these property interests is important to spur additional research and development of new pharmaceuticals that offer major opportunities to combat disease and ease human suffering. WTO dispute settlement is available in cases where U.S. commercial interests are being seriously harmed by another member's failure to comply with this agreement.

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